

## **REMARKS**

Upon entry of the foregoing Amendment, claims 1, 3-6, 8, 9, 11-14, 16, 17, 19-22, 24, and 25 are pending in this present application. Claims 14 and 22 are amended, no claims are added, and no claims are cancelled. Support for the amendments presented above is provided throughout the specification and claims as originally filed. Applicants expressly reserve the right to prosecute the subject matter of the unamended and/or cancelled claims, or any other subject matter supported by the Specification, in one or more continuation applications. In view of the foregoing Amendment and the following Remarks, reconsideration and allowance of all the pending claims is anticipated.

### ***Rejections Under 35 U.S.C. § 112***

The Examiner has rejected claims 14 and 22 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. In particular, the Examiner contends that claims 14 and 22 lack a proper antecedent basis. In light of the foregoing Amendment, this rejection is believed to be moot.

### ***Rejections Under 35 U.S.C. § 102***

The Examiner has rejected claims 3, 9, 11, 17, 19, and 25 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,999,179 to Kekic *et al.* ("Kekic"). Applicants traverse this rejection as being improper at least on the grounds that Kekic does not clearly and unambiguously disclose each and every feature of the claimed invention.

For example, at page 11 of Applicants' Response filed September 4, 2007, Applicants demonstrated that Kekic does not disclose the following features recited *inter alia* in claim 25:

**polling the first and second network devices based on a polling configuration file that specifies separate intervals for individual ones of the parameters related to the hardware characteristics.**

Independent claims 9 and 17 recite similar features. In responding to Applicants' previous Response, the Office Action relies on several sections of Kekic. The first section of Kekic (col. 8, lines 9-11), cited and reproduced at page 3 of the Office Action, appears to disclose that in the disclosure of Kekic, each network element (*e.g.*, a device) may include a set of components, and that each of these

components has various states in which it may be operating at a given time. Column 6, lines 16-20 of Kekic disclose that examples of such components may include a set of ports, a set of LEDs, and/or a set of action buttons used to change the state of the network element.

Another section of Kekic relied on at page 3 of the Office Action is column 18, lines 19-30. This section reads as follows:

A poll event in a managed element object contains information on a set of attributes that need to be polled, a default polling interval, a current polling interval that is being used, and a set of flags that are used to determine if polling is turned on or off for the event, and if the polling results are to be logged. The poll event also contains a list of states and an associated polling interval for each state. A poll event is processed by the poll server only when the managed element component associated with the poll event is in one of the listed states. The primary purpose of states is to classify the status of a component. (emphasis added)

This section of Kekic discusses the implementation of a managed element object to manage the polling of a network element. The managed element object may specify a plurality of attributes to be polled, and that the interval at which these attributes are polled may be based on a state of a component of the network element to be polled. However, this section clearly discloses that, at a given point in time, a single polling interval is used for the entire specified set of attributes. Therefore, this section of Kekic does not disclose **“separate intervals for individual ones of the parameters related to”** the network element and/or its components.

It appears from the Office Action that the Examiner is placing an emphasis on an alleged disclosure in the section of Kekic reproduced immediately above (i) that the polling interval may be variable based on a state of a single component of the network element, and/or (ii) that the polling interval discussed is for a single component of the network element. Even if both of these characterizations of this section of Kekic were accurate, it would still not anticipate the features of claim 25 reproduced above.

The variability of the polling interval is not relevant to the features of claim 25 reproduced above. Even if the polling interval is varied, the same (varied) polling interval is still used for all of the attributes in the set of attributes to be polled. As such, it doesn't matter, for the purposes of claim 25, how the variability of the polling

interval is determined, the variable polling interval is still used to poll all of the specified attributes and does not constitute **"separate intervals for individual ones of the parameters related to"** the network element and/or its components.

Whether Kekic discloses a polling interval that is specific to the attributes of a single component of the network element (as opposed to all of the attributes of the entire network element) is not relevant to the features of claim 25 reproduced above. Even if the polling interval is used only to poll the attributes of a single component within the network element (Applicants contend that the section of Kekic reproduced above does not support this interpretation), the single polling interval is still used to poll all of the attributes within the "set of attributes" to be polled for that component. As such, in the disclosure of Kekic, the polling interval is specified for the attributes of the component as a group, and not as **"separate intervals for individual ones of the parameters related to"** the component.

The other sections of Kekic specifically relied on by the Examiner (col. 4, lines 56-58, and col. 18, lines 48-55) in addressing Applicants' arguments with respect to these features of claim 25 are no more relevant than the ones discussed above. Therefore, the Examiner has again failed to demonstrate that Kekic clearly and unambiguously discloses **"polling the first and second network devices based on a polling configuration file that specifies separate intervals for individual ones of the parameters related to the hardware characteristics."** For at least this reason the rejection of claims 1, 9, and 17 based on the sections of Kekic relied on by the Examiner is improper and must be withdrawn.

claims 3, 9, 11, 17, and 19 now depend from a corresponding one of claims 9, 17, and 25. Accordingly, the rejection of claims 3, 8, 11, 16, 19, and 24 based on cited portions of Kekic is improper, based on the dependency of these claims as well as for the features that they recite individually.

### ***Rejections Under 35 U.S.C. § 103***

#### **I. Rejections based on Kekic and Rivette**

The Examiner has rejected claims 1, 6, 8, 14, 16, and 24 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kekic in view of U.S. Patent Application Publication No. 2007/0208669 to Rivette *et al.* ("Rivette"). Applicants traverse these rejections as being improper at least because the sections of Rivette relied on by the

Examiner, on their own, do not constitute evidence of knowledge available to one of ordinary skill in the art at the time of the invention.

In making a rejection based on 35 U.S.C. § 103(a), the Examiner bears the burden of establishing a *prima facie* case that the claimed invention would have been obvious to one of ordinary skill in the art. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992). To meet this burden, the Examiner must provide teachings and/or suggestions of the prior art of each of the features of the claimed invention. The Examiner's reliance on the cited sections of Rivette does constitute such evidence because the effective filing date of Rivette does not pre-date the filing date of the instant application. As such, these sections of Rivette do not necessarily constitute prior art.

It is noted that Rivette is a continuation-in-part of various U.S. Patents and U.S. Patent Applications now abandoned with filing dates prior to the instant application. However, only the portions of Rivette that are disclosed in the patents and/or applications that Rivette is a continuation-in-part of can be properly be relied on in a rejection of the claims in the present application. Since the Examiner has failed to demonstrate that the sections of Rivette relied on in the Office Action are disclosed in the patents and/or applications from which Rivette claims priority, the Examiner has not made a *prima facie* case that each and every feature of the claimed invention would have been obvious at the time of the invention. For at least this reason the rejection of claims 1, 6, 8, 14, 16, and 24 based on the cited sections of Kekic and Rivette is improper and must be withdrawn.

II. Rejections based on Kekic and Fung

The Examiner has rejected claims 4, 12, and 20 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kekic in view of U.S. Patent Application Publication No. 2003/0200473 to Fung ("Fung"). Applicants traverse these rejections as being improper at least on the grounds that the sections of Kekic and Fung cited by the Examiner do not teach or suggest all of the features of the claimed invention.

For example, claims 4, 12, and 20 depend from independent claims 25, 9, and 17, respectively. The sections of Fung relied on by the Examiner do not address the deficiencies of Kekic with respect to the features of claims 9, 17, and 25 set forth above. As such, the rejections of claims 4, 12, and 20 based on the cited passages

of Kekic and Fung should be withdrawn due to their dependency as well as for the features that they recite individually.

III. Rejections based on Kekic, Rivette, and Fung

The Examiner has rejected claim 22 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kekic in view of Rivette, and in further view of Fung. This rejection is traversed at least on the grounds that, as was discussed above with respect to claims 1, 6, 8, 14, 16, and 24, (A) the sections of Rivette relied on by the Examiner, on their own, do not constitute evidence of knowledge available to one of ordinary skill in the art at the time of the invention, and/or (B) Rivette constitutes non-analogous art to the claimed invention. For one or more of the reasons presented above, the rejection of claim 22 based on the proposed combination of Kekic, Rivette, and Fung should be withdrawn.

**CONCLUSION**

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is anticipated.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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Respectfully submitted,

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